

# **CHAPTER 30**

## **SOLDIER SUPPORT TO FAMILY MEMBERS**

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# **CHAPTER 30**

## **SOLDIER SUPPORT TO FAMILY MEMBERS**

### *Outline of Instruction*

#### **I. INTRODUCTION:**

“I was married by a judge. I should have asked for a jury.”

— Groucho Marx

#### **II. REFERENCES.**

Army Regulation 608-99, Family Support, Child Custody, and Paternity (1 Nov. 1994).

#### **III. MILITARY POLICY REGARDING FAMILY SUPPORT.**

- A. DOD Policy: Service members will not use military service to evade family support obligations.
- B. Support Enforcement in the Army: Army Regulation 608-99.
  - 1. Purposes of AR 608-99.
    - a. Implement DOD policy on family support.
    - b. Define the amount of a soldier's family support obligation.
    - c. Create a mechanism to ensure soldiers meet their support obligations.

- d. Define Army policy regarding paternity allegations.
  - e. Define Army policy regarding child custody matters.
2. Command interest. The purpose of interim support is to provide some family support while the parties seek an agreement or settlement by a court.
3. Whom must the soldier support?
- a. Soldiers must support "family members." See glossary of AR 608-99.
    - (1) Current spouse.
    - (2) Minor children (unmarried, under 18 and not in the Armed Forces) born into the soldier's marriage or adopted by the soldier.
    - (3) Children born out of wedlock to:
      - (a) A female who is a soldier; or
      - (b) A male soldier **if** a court order establishing paternity exists **and** it requires him to provide support.
    - (4) Any other person the soldier may be required by law to support. Eg.
      - (a) Stepchildren. Not included as family members unless required by state law.
      - (b) Parents. Not included as family members unless required by state law. .

- b. **Note:** Family member under AR 608-99 may differ from the definition of dependent for other entitlements such as health care, BAH, and commissary/PX benefits.

4. How Much Support?

- a. A soldier must comply with any applicable court order.
- b. Absent court ordered support, a soldier must comply with any written agreement regarding support (e.g. a separation agreement).
- c. Absent a court order written agreement, or effective oral agreement, then a soldier must pay the interim support required under AR 608-99, para. 2-6.
- d. Interim Support Requirements are based on BAH II-WITH, and BAH II -DIFF rates for a soldier's rank. As of 1 January 1998, soldiers receive Basic Allowance For Housing (BAH). BAH is a combination of the BAQ rate authorized and VHA for the locale. THE ARMY SUPPORT OBLIGATION DID NOT CHANGE . The BAH II Table, July 2001 reflects that portion of the BAH reflecting the old BAQ (See attached table).

5. Interim Support Requirement. AR 608-99, para. 2-6.

- a. An Army-created guideline for support in the absence of an agreement between the parties or a court order.
- b. Not intended to permanently define the support obligation--emphasis is on the word *interim*.

6. Rules for a Single Family:

- a. All family members **living in government quarters:** BAH II DIFF.

- (1) **Example 1:** CPT Leaving moved out of his on-post quarters after deciding to divorce his civilian wife. They do not have children. Mrs. Leaving obtained permission to live in the quarters for an additional six months without charge. What is CPT Leaving's interim support requirement if any?

**Answer 1:** *If there are no court orders or written agreements CPT Leaving will owe the BAH II or the BAH II DIFF depending on where his family members reside. Since Mrs. Leaving is his only family member and she will reside on-post, CPT Leaving will owe the BAH II DIFF for a CPT: \$132.60*

- b. All family members **living off-post:** BAH-II-WITH

- (1) **Example 2:** MAJ Major moved out of her off-post rental house after deciding to divorce her civilian husband, Mr. Major. They have three children who all remained with Mr. Major in the rental house. What is MAJ Major's interim support requirement?

**Answer 2:** *If there are no court orders or written agreements, MAJ Major will owe the BAH II WITH or BAH II DIFF depending on where the family members reside. Since Mr. Major and the kids all reside in the rental house, MAJ Major will owe the BAH II WITH: \$960.90*

- c. Family members residing in **different locations:** PRO-RATA share to those not in government quarters and BAH II DIFF for members residing in government quarters.

- (1) **Example 3:** CPT Moneymaker and her husband have four children and live on-post in government quarters. Mr. Moneymaker moves out to an apartment after the couple decides to separate with a view toward divorce. What is CPT Moneymaker's interim support requirement, if any?

**Answer 3:** *If there are no court orders or written agreements, CPT Money Maker owes a PRO RATA SHARE of her BAH II WITH to each family member not in government quarters and BAH II DIFF to the aggregate group of family members residing in the quarters. Thus, since she resides in the quarters with her four children, she only owes Mr. Moneymaker 1/5 or 20% of her BAH II WITH:  $\$795.00 \times .20 = \$159.00$*

7. Rules for Military Couple:

- a. Neither spouse owes support to the other if they do not have children.

- (1) **Example 4:** SFC Culpepper and SSG Culpepper were assigned to two separate duty locations. The Army sent SFC Culpepper language training in California and SSG Culpepper to Korea for a year. What are the respective support requirements if they do not have children?

**Answer 4:** None. Service members do not have to support each other when separated if they do not have children.

- b. If a military couple has children, and the children are all living with one spouse, the non-custodial spouse owes BAH II DIFF.

- (1) **Hypothetical 5:** What if the Culpepper's have two children and the kids will both reside with SFC Culpepper in California? Does SSG Culpepper owe support?

**Answer 5:** *If the couple is separated for whatever reason, the non-custodial military spouse owes the BAH II DIFF to the custodial military spouse. Thus, SSG Culpepper owes \$218.70 to SFC Culpepper.*

- c. If at least one child resides with each spouse, neither spouse owes support to the other.

- (1) **Hypothetical 6:** What if one child goes to Korea with SSG Culpepper and the other child goes to California with SFC Culpepper?

**Answer 6:** *When military spouses are separated and at least one child resides with each spouse, neither owes support regardless of the proportion of children. Here, neither Culpepper would owe support to the other.*

8. Rules for Multiple Families:

- a. A soldier might have family members from different relationships and living at varying locations. A soldier in a multiple family situation must provide a pro-rata share of the BAH II WITH to all family members not in government quarters. Those family members in government quarters receive BAH II DIFF as a group.

- (1) **Hypothetical 7:** SSG Thomas (E-6) has two children by a previous relationship with no court ordered support. He just separated from his current family of a wife and one child who reside off post. What is SSG Thomas' support requirement?

**Answer 7:** *Since there are no court orders or written agreements, the first step is to count total family members. Here SSG Thomas has four family members: two kids from a prior relationship, his current spouse, and his child with his current spouse. Each family member therefore is entitled to 1/4 or 25% of his BAH II WITH:  $\$645.90 \times .25 = \$161.475$  per family member. This means that two children from the prior marriage receive  $\$161.475 \times 2 = \$322.95$ . His spouse and their child receive the other  $\$322.95$  for a total outlay of his entire BAH II WITH of  $\$645.90$*

- b. Remember that the location of family members determines how much interim support the service member owes.

- (1) **Hypothetical 8:** Same facts as #7, but suppose his two children from his prior relationship live with their mother and step-father, SSG Newguy, in government quarters. What is SSG Thomas' support requirement?

**Answer 8:** *There are still no court orders or written agreements. SSG Thomas still has four family members each entitled to something. The current spouse and child still represent two of four family members and since they live off post, they are each entitled to 25% of the BAH II WITH just as explained in Analysis 7. However, since his children from the prior relationship are residing in government quarters, collectively they are entitled only to an amount equal to the BAH II DIFF. Thus, SSG Thomas still owes \$322.95 to his current spouse, but only \$218.70 to his prior children for a total outlay of \$541.65.*

- c. A service member must still comply with any valid existing court orders.

- (1) **Hypothetical 9:** Same as #8, but now you learn that SSG has a valid court order requiring him to pay \$150 per month per child for each of the two children of the previous relationship. What is SSG Thomas' support requirement?

**Answer 9:** *AR 608-99 requires SSG Thomas to honor the court ordered support of \$300 for his children of his prior relationship. The "interim" support requirements do not apply to this family. He still must provide interim support to the current spouse and child absent a court order for them. Since SSG Thomas's current spouse and child still represent two of his four "family members" he will continue to owe \$322.95 to the current spouse and child, but he will owe \$300 to the children of the previous marriage by court order for a total outlay of \$622.95.*

- d. A service member must comply with all court orders, not just ones pertaining to child support.

- (1) **Hypothetical 10:** Same facts as #9 except you just found a clause in the court order requiring SSG Thomas to \$100 per month in support to the children's mother.

**Answer 10:** *Since AR 608-99 requires a service member to comply with all valid court orders, SSG Thomas will additionally owe \$100 per month in support on top of the \$300 in child support for a total of \$400 to that family. He still owes the \$322.95 to his current spouse and child for a grand total of \$722.95.*



9. Payment In Kind. AR 608-99, paras. 2-7d and e.

- a. Allowed only in cases of interim support unless the court order or written agreement allows for payment in kind.
- b. Limited to payment of non-government housing expenses for a dwelling in which the supported family members reside.
- c. Rent—Only if the service member has an obligation under the lease.
- d. Real property taxes and property insurance, mortgages
- e. DOES NOT include utilities, cable T.V.
- f. Soldier must make up any shortfall between payment in kind and actual support obligation.
- g. Other support in kind such as car payments, insurance and credit card obligations requires written consent of the supported family members.

10. The Commander's Role.

- a. Respond to inquiries
- b. Establish compliance procedures
  - (1) Commander can counsel the soldier and impose punishment for a failure to provide support.
  - (2) Commander cannot take money away from soldier and give it to the family.
- c. Monitor compliance

- d. Train subordinate commanders
- e. Setting the amount of the support obligation.
  - (1) **Company commanders** cannot excuse failure to comply with the minimum requirements created by the regulation.
  - (2) **Battalion commanders** may release a soldier from the regulatory support requirements of AR 608-99 in the following circumstances:
    - (a) *Order has been issued by a court without jurisdiction.* Release from the requirement to support in accordance with the terms of a court order is only appropriate when jurisdiction is clearly lacking and the soldier has continuously provided support in accordance with a written agreement or the interim requirements of AR 608-99.
    - (b) *A court order does not contain a financial support provision.* Release under this authority is limited and should be discussed with the servicing SJA office.
    - (c) *The income of the spouse exceeds the military pay of the soldier.* This is a defense to spousal support, not child support, and only applies in the absence of a court order or written separation agreement.
    - (d) *The soldier has been the victim of a substantiated case of physical abuse.* Only appropriate when the abuse is documented by a court or a Family Advocacy Case Management Team (FACMT) and did not involve a mutual affray or abuse of the spouse by the soldier. This exception authorizes release from regulatory requirements to support a spouse, not children.

- (e) *The supported family member is in jail.* This exception applies to any penal institution, regardless of the reason for incarceration.
  - (f) *The supported child is in the custody of another who is not the lawful custodian.* This limited exception applies only when the soldier is the lawful custodian and is diligently pursuing physical custody.
- f. Credit for support in kind is limited, and an allegation of marital infidelity or desertion is *not* a defense.
- g. Ensure the troops know their obligations.

11. Counsel the soldier about a nonsupport complaint.

- a. If possible, send the soldier to a Legal Assistance office.
- b. Provide a rights advisement.
  - (1) AR 608-99 is **punitive**, and failure to provide required support is a violation of Article 92, UCMJ.
  - (2) The soldier should also be given an opportunity to complete DA Form 5459-R, Authority to Release Information From Army Records on Nonsupport/Child Custody/Paternity Inquiries. This form is included in the regulation.
  - (3) Question the soldier about the situation.
  - (4) Respond to the complaint within 14 days.
- c. Final step: determine whether disciplinary action is appropriate.

- (1) Sanctions are a means of "encouraging" support and deterring nonsupport.
- (2) Possible actions include:
  - (a) Counseling;
  - (b) Letter of reprimand;
  - (c) Bar to reenlistment;
  - (d) Administrative separation; and/or
  - (e) Punishment under the UCMJ (failure to obey a lawful general regulation--AR 608-99).
- (3) Additionally, if the soldier has been drawing "BAH-WITH" and not supporting the family, the finance officer will terminate BAH and recoup past BAH during periods of non-support.

12. Soldiers seeking child support from ex-spouses.

- a. Soldiers can use the "IV-D" program in the state in which they are assigned.
- b. Under the IV-D program, for a minimal fee (not exceeding \$25.00), the state will pursue the soldier's support claim, even if the non-supporting ex-spouse is located in a different state.

#### **IV. PATERNITY.**

- A. The Army's Role.

1. Civilian Matter. The command will not adjudicate paternity, but will answer the mail.
2. Counsel Soldier. The main obligation of the command is to counsel the service member and respond to the inquiry.

B. The Commander's Role.

1. Advise the soldier of the allegation.
2. Give him an opportunity to consult with a legal assistance attorney.
3. Give him an opportunity to admit or deny paternity.
4. Answer the claimant based on the soldier's response and his decision regarding release of information.
5. If the soldier admits paternity, the chain of command should help him start an allotment, apply for BAH, and obtain an ID card for the child.

## V. CHILD CUSTODY AND PARENTAL KIDNAPPING.

A. Army Policy.

1. Soldiers must comply with child custody orders.
2. Regulatory violations. A soldier who is aware that another person is the lawful custodian of an unmarried child under the age of fourteen will not:
  - a. Abduct, take, entice, or carry the child away from the lawful custodian;
  - b. Withhold, detain, or conceal the child from the lawful custodian.

3. Commander's Actions.

a. Advise the soldier of legal rights.

(1) AR 608-99 is punitive, so Article 31 rights apply.

(2) Soldier also should be asked for consent to release information on DA Form 5459-R.

b. Question the soldier.

c. Consult with an administrative law attorney as necessary to clarify the legal posture of the case.

d. Respond to the claimant with appropriate information.

e. Take appropriate disciplinary action. The full range of administrative and punitive actions can be taken against a soldier who violates a custody order.

B. DOD Policy. AR 608-99, ch. 4.

1. Special rule for soldiers and family members who are:

a. Stationed overseas, and

b. The subject of:

(1) A judicial contempt citation, order to (show cause, or a felony charge.

(2) Arising from a family support, child custody, child visitation or paternity case.

2. Upon receiving notice of the legal action, the command attempts to get the matter resolved without the soldier or the family member having to return to the U.S.
3. If this is not possible, and if the requesting civilian court or agency agrees to provide intra-U.S. transportation, then the Army must return the soldier to the nearest U.S. port of entry, at government expense.
4. If the subject of the request is a family member, or involves a soldier but does not involve child custody, the company commander will forward the matter with recommendations to the GCMCA.
5. The GCMCA, in coordination with the SJA, will consider a range of possible solutions including, but not limited to, withdrawal of command sponsorship, adverse action and tour curtailment.

## **VI. NOTES**

## JANUARY 2003 BAH TABLE II AND DIFFERENTIAL

GRADE	BAH II WITH	BAH II DIFF
0-7 To 0-10	\$1256.40	\$249.90
06	\$1131.00	\$207.00
05	\$1090.20	\$200.10
04	\$960.90	\$132.90
03	\$795.00	\$132.60
02	\$678.60	\$156.60
01	\$607.20	\$169.50
03E	\$854.40	\$139.50
02E	\$771.00	\$166.50
01E	\$712.50	\$195.00
W5	\$927.90	\$83.10
W4	\$850.50	\$102.30
W3	\$779.70	\$154.50
W2	\$716.70	\$163.20
W1	\$619.80	\$157.80
E9	\$816.30	\$208.80
E8	\$752.70	\$195.30
E7	\$698.70	\$226.50
E6	\$645.90	\$218.70
E5	\$580.80	\$186.00
E4	\$504.60	\$161.10
E3	\$469.80	\$131.70
E2	\$447.60	\$176.70
E1	\$447.60	\$208.80



